BRIGHAM CITY APPEAL AUTHORITY
JANUARY 09, 2008 – MEETING MINUTES

PRESENT:	George Berkley	Chairman
	Don Peart	Vice Chair
	Marilyn Peterson	Member
	Jaye Poelman	Member
	Jess Palmer	Alternate
ALSO PRESENT:	Jeff Leishman	Associate Planner

AGENDA:

- ELECTION OF CHAIR AND VICE CHAIR FOR 2008 CALENDAR YEAR
- APPROVAL OF THE AGENDA
- APPROVAL OF THE DECEMBER 12, 2007 MEETING MINUTES
- APPLICATION #612 / PUBLIC HEARING FOR LEGAL NONCONFORMING LOT / 235 WEST 700 NORTH
- REVIEW APPEAL AUTHORITY BYLAWS

George Berkley opened the meeting at 5:35 p.m.

ELECTION OF CHAIR AND VICE CHAIR FOR 2008 CALENDAR YEAR

MOTION: A motion was made by Don Peart to have George Berkley continue as Chairman of this group. The motion was seconded by Jess Palmer.

Mr. Berkley said they were taking nominations, Mr. Peart nominated George Berkley. There were no more nominations.

MOTION: A motion was made by Jess Palmer to cease nominations. The motion was seconded by Jaye Poelman.

The motion that George Berkley be Chairman for the 2008 Calendar year passed unanimously.

Mr. Berkley nominated Don Peart for Vice Chairman. The nomination was seconded by Mr. Poelman.

MOTION: A motion was made by Jess Palmer to cease nominations. The motion was seconded by Jaye Poelman and passed unanimously.

A vote was taken as to Don Peart serving as Vice Chairman for the 2008 Calendar year. The vote was unanimous.

Marilyn Peterson joined the meeting.

APPROVAL OF THE AGENDA

MOTION: A motion was made by Jaye Poelman to approve the agenda as written. The motion was seconded by Don Peart and passed unanimously.

APPROVAL OF THE DECEMBER 12, 2007 MEETING MINUTES

On line 305, the word 'Do' should be changed to 'Due'.

MOTION: A motion was made by Don Peart to approve the minutes of the November 14, 2007 meeting as amended. The motion was seconded by Marilyn Peterson and passed unanimously.

APPLICATION #612 / PUBLIC HEARING FOR LEGAL NONCONFORMING LOT / 235 WEST 700 NORTH

The applicant sent a letter requesting to proceed with the meeting in his absence. Mr. Berkley asked if there was anyone in the audience that was present to represent the applicant; there was no response.
The criterion for acceptance is to review and create findings of fact. Kenneth J. Kolonko owns a duplex at 235 West 700 North and is requesting to divide that property into two pieces. The piece on the corner would be retained for the two-family dwelling. The piece to the south of the dwelling would be subdivided to be a single family dwelling lot; available for construction of a single family dwelling. The two-family dwelling is located in a single family district and is a nonconforming use because it does not conform to single family standards. At one time, the zone allowed a two-family dwelling but was rezoned in about 1973. The City has determined that the two-family dwelling is legal nonconforming to the current land use standards. There is no lot area standard for a two-family dwelling in an R-1-8 single family zoning district. Therefore, Mr. Kolonko is asking the Appeal Authority to identify a standard so he can determine the feasibility of subdividing the parcel.

The two-family dwelling was constructed in 1961 and at that time the standard was a 1957 edition of the zoning code and the district was zoned R-2. The current zoning is R-1-8, which does not allow duplexes. The lot width is 130-feet; lot depth is 164.5-feet and is greater on one side than the other. The current lot area is 21,339 sq. ft. When this duplex was built, the lot was required to be 8,000 sq. ft. in area and is not defined under the current code. The rear yard setback in 1961 was required to be 30-feet from the rear property line to the rear of the structure and is not defined in the current standards. Mr. Kolonko is proposing from the rear of the structure to the dividing line to be 30-feet, as would have been required in 1961 and the lot area 12,499 sq. ft. for the north lot and 8,840 sq. ft. for the south lot. Mr. Kolonko is proposing to maintain his two-family dwelling on a lot that has 12,499 sq. ft. where 8,000 sq. ft. was required in the R-2 1957 edition. The two-family dwelling rear yard will be 30-feet where 30-feet was required in the R-2 1957 edition. The proposed new south lot, that is intended for a single family dwelling, will have a lot width of 68-feet where 60-feet is required by the current ordinance and 8,840 sq. ft. where 8,000 sq. ft. is required by the current ordinance.

Since Mr. Kolonko is providing more lot area than was initially required and providing a rear lot setback compliant with what would have been initially required, the request seems reasonable and would have been compliant and acceptable with the operating standard in 1961.

The City Attorney, Gregory P. Nielsen, wrote a letter stating that he reviewed the provided information on the Kolonko property, application number 612. Based upon the information he reviewed from Jeff Leishman and Mr. Kolonko, the City's conclusion that Mr. Kolonko's request seems reasonable, pursuant to Chapter 29.04.020, paragraph B, sentence 4, seems defensible.

Mr. Berkley clarified that the action before them is to define what the minimum lot size would be for the existing duplex as well as define what the rear setback minimum would be. The recommendation from

the owner is compliant with the 1957 ordinance and would also make those lots in accordance with what is currently required for the new lot. Today, there is no standard for a duplex in a single family zone because they are not allowed.

There was a break while Mr. Leishman went to get the standard for an area zoned for a duplex.

Mr. Leishman gave three standards that are available in a multifamily zone; R-M-7 (Residential – Multifamily – 7 units per acre), R-M-15 (Residential –Multifamily – 15 units per acre) and R-M-30 (Residential – Multifamily – 30 units per acre). Within the standard in an R-M-7 zone, the first unit would be required to be a 7,000 sq. ft. lot. For the second unit and each additional unit in that building would be 6,000 sq. ft. so a duplex in and R-M-7 would require 13,000 sq. ft. in the lot. An R-M-15 zone would require 8,000 sq. ft. for the first unit and 2,500 sq. ft. for each additional unit for a total of 10,500 sq. ft. for a duplex. In an R-M-30 zone the requirement for a duplex would be 8,000 sq. ft. for the first unit and 1,200 sq. ft. for each additional unit for a total of 9,200 sq. ft. for the lot. The rear yard setback in an R-M-7 zone would be required to be 30-feet. In an R-M-15 zone the rear yard setback would be 20-feet and in an R-M-30 the rear yard setback would be required to be 20-feet.

In defining this, Ms. Peterson asked if they would be setting a precedence for the City in this category and if it should go through the zoning committee. Mr. Leishman replied that they are establishing a standard for a duplex in a single family zone that was built under the 1957 ordinance. That standard is being set only for a legal nonconforming use. This decision would not be transferred to a property in a single family zone. If there was another situation like this under the same conditions, then this decision would set a precedence for that. This body is reviewing the property to determine how much land this gentleman needs to retain to allow the duplex to function. The minimum area for the lot and minimum setback, from the rear of the structure to the rear property line, needs to be determined so Mr. Kolonko can make a decision as to whether he wants to go through the planning process and create a two-lot subdivision.

Mr. Berkley commented that if they took the most severe requirements, such as in R-M-7 where it would require a duplex to have a 13,000 sq. ft. lot size, Mr. Kolonko is only 501 sq. ft. away. If it was 34-feet instead of 30-feet to the property line it would get him over the 13,000 sq. ft. and it would still leave over 8,000 sq. ft. in the second lot; which would be compliant to the new standards. That would change the frontage from 68-feet to 64-feet which would make it compliant with the standards as well as if the R-M-7 requirements were imposed. It will still be a duplex in a single family zone but it was legal nonconforming when it was built so there is nothing contrary to the fact that the duplex is there. If the board made these determinations, there would not be much of a change and there would still be a buildable second lot that meets that current standards and requirements.

Mr. Peart commented that the 30-foot setback is in compliance, the way it is proposed. He said he was not sure he would like to cut down the second lot by an additional 4-feet, it would still be in compliance but it would make it smaller than it already is. Being a legal nonconforming lot, it already has the required 30-foot setback. Even though it does not comply with the 13,000 sq. ft., Mr. Peart suggested that it would be better to leave the proposed lot a little bigger.

Mr. Berkley invited the audience to address the issue.

Leon Jeppesen came forward. Mr. Jeppesen stated that there were two or three things the committee needed to be aware of as they consider this application. He said there are two other duplexes in this same block, one on the opposite corner and one on 600 North and 200 West, which would be nonconforming by today's standard. Mr. Jeppesen also stated that the applicant's duplex had not been used as a duplex since before he purchased it. He said that when Mr. Kolonko bought the place it had extensive water damage and he spent about five years putting a new roof on it and now has the best roof in the city on it. The east duplex has not been occupied since it was purchased by Mr. Kolonko and is an empty shell. The gravel roof sloped and the ceiling was against the roof. A contractor was hired to finish the west half of the duplex enough so that it could be rented out. Mr. Jeppesen stated that it has sat that way for about the past ten years and it would take extensive remodeling to bring it up to a livable condition. He commented that he does not understand why, since it is nonconforming, there is any reason to approve it.

Mr. Peart asked Mr. Jeppesen to clarify that he did not want it to be approved as a duplex. Mr. Jeppesen stated that was correct as the whole neighborhood is single family dwelling and since it has not been used as a duplex for so many years, he would not like to have it approved as a duplex.

Mr. Berkley stated that the issue before them is whether or not to divide off the south part so they can put a single family dwelling on it. The fact that it is a duplex is not the issue that is being addressed. Mr. Leishman commented that abandonment of a use is difficult to prove for a structure. If it could be shown that the structure has been remodeled and that the family in residence has utilization of 100-percent of the floor area, then it could be reasonably be concluded that Mr. Kolonko has abandoned the duplex usage of the building. As there is a family residing in the west half of the duplex and the length of time it is taking Mr. Kolonko to finish the remodeling, it would be extremely difficult to state that he has abandoned the duplex usage.

Mr. Jeppesen asked if Mr. Kolonko has been paying two bills for each of the water, electrical and sewer meters and for the garbage collection or if that has been abandoned to where he is just paying one. He commented that if the utilities have been abandoned than the duplex has probably been abandoned. Mr. Jeppesen stated his concern that he has seen people set up housekeeping in old abandoned homes and do not meet the codes and he does not want to see that happen. He would like to see the rating of duplex removed and have it classified as a single family dwelling in a single family neighborhood.

Mr. Berkley restated that what is before them at this meeting does not affect Mr. Kolonko's ability to finish remodeling the building and having another family move in. Mr. Peart commented that changing the classification would be a separate zoning issue rather than what they are addressing at this time. That comment was confirmed by Mr. Leishman.

Mr. Jeppesen recommended making the south lot as wide as possible because of concerns regarding the main irrigation structure for the area. He pointed out on the plat map where the irrigation pipes are located. Mr. Jeppesen commented that in fairness to a new home owner, if the lot was given as much width as possible then they would be able to accommodate the main head irrigation ditch. The irrigation line is 4 or 5-feet over the property line.

The sideyard requirement in this zone for a single family home is 6-foot minimum or a combination of 16 such as 6 and 10 or 8 and 8. The opposite side yards have to equal 16.

Neighbor notification was sent out and calls came from Ned Young, neighbor across the street to the north and a lady living directly east of the Kolonko property. Mr. Leishman explained to them what the request was and what was happening on that request. They did not comment as to whether they supported or did not support it; they just inquired as to what the application was for.

Ms. Peterson asked about what kind of usage there is for a ditch like that. Mr. Leishman replied that the City does not get involved with that; it is the concern of the water users. The ditch would not be on the title but would be an undefined water right. If the property owner is the last user of the water and they prefer it to not go through their property, they could cover the ditch but if it continues on elsewhere the ditch cannot be covered. Mr. Jeppesen said the ditch was piped and covered. He also said that as the water goes across the Kolonko property it dumps into the North Field stream ditch on 300 West. The North Field and the Box Elder Creek water companies both end right there and through an agreement dump into that line so the excess water dumps in there, goes through the ditch and into the storm drain system north of 900 North. The water can be piped or relocated through the property as long as where it is taken from and where it is disposed of does not change.

Ms. Peterson asked, if this application is approved, if the prospective property owner would have enough property to do anything with. Mr. Leishman commented that the 10-foot sideyard could be put on the side where the ditch is located. In the standards, the front yard has to be 25-feet, from the front property line to the structure, and from the rear property line to the structure has to be 25-feet. The side yards have already been mentioned. The other factor is that the property owner cannot encumber more than 35-percent of the property so he cannot expand to the minimum. Even though it has been said that he

can be within 6-feet of the side yard, depending on the shape of the home, he may have to be more than that because of the 35-percent limit.

Ms. Peterson asked if there was a way to indicate on the title that the ditch is there so future buyers are aware of it. Mr. Leishman replied that ditches are not shown on subdivision plats as they are not a matter for the City's concern. The property to the south is not relevant here as the corner lot is what is being addressed here. Mr. Kolonko is the one that will decide if he is going to subdivide the property. If he wants to subdivide then he will go through the standards of the proper subdivision approval. Only recorded documents are shown on the plat, not those things that are considered prescriptive right.

Leon Jeppesen stated that on the piece of property he owns, the irrigation easement is recorded on his deed. Mr. Leishman commented that if that is encumbered on that property it will show up on a title report and will have to be shown on the subdivision plat.

Mr. Berkley commented that if they approve this application as it is, it would give more than the 8,000 sq. ft. on both lots but it would be a little shy of what is currently required.

Mr. Leishman said that when this originally came in and was being reviewed, Mr. Kolonko wanted to have significantly less than 30-feet. He told Mr. Kolonko that he doubted the Appeal Authority would approve anything less than the standard. Based on Mr. Leishman's suggestions, Mr. Kolonko agreed to move the property line further south and provide the 30-feet, which would have been required in 1961. Mr. Berkley commented that it was a good point and it would satisfy the past and current requirements in that area.

Findings of fact need to be created and the motion needs to be based on those findings. The findings do not need to follow the variance.

> **Motion**: A motion was made by Don Peart to accept application #612 as presented with a 30-foot setback, which is the current standard for a multi-dwelling. Even though it already is a legal nonconforming lot, which is as close to a conforming lot that can be had. It is important that the 30-foot setback be maintained. It is a little shy of the R-M-7 requirement of 13,000 feet but is still 12,499 sq. ft. which is still appropriate because it is a legal nonconforming lot. Mr. Peart proposed that it be accepted with the 30-foot rear yard setback. The motion was seconded by Jaye Poelman.
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> Discussion: Ms. Peterson suggested that findings of fact include that the duplex was in place prior to the current zoning and that it did meet the requirements at the time it was built. Don Peart was in agreement with Ms. Peterson's suggestion to amend the motion, as was Jaye Poelman.
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> The motion passed unanimously.

Mr. Berkley stated that this decision has allowed the property owner to petition the City for a two lot subdivision. If anyone disapproves of the motion, they have 30-days to appeal that decision to the District Court.

REVIEW APPEAL AUTHORITY BYLAWS

In reference to page 3, Mr. Berkley suggested that before the final vote, the applicant should be informed that if they think there is more information they would like to present before the vote, they can ask for a one-time continuance that can be granted at no additional cost to them. Ms. Peterson commented that it would be more beneficial to inform the applicant at the onset of the meeting. As the applicant has the burden to prove their case and if they go through the whole meeting and feel the decision may not be favorable, it would be very time consuming. Mr. Berkley explained that was the intent of offering the continuance as the applicant may realize they need additional information to satisfy the requirement; something they may not have understood at the onset. He felt it is a reasonable approach and the

applicant should be told they have that option if they want to exercise it. Mr. Peart agreed that was the intent of what is written in the bylaws and why it is there. He said it is something that ought to stay and agreed that the applicants should be informed about it prior to the voting. This is different and separate from the applicant choosing to continue to another meeting if there are less than five members present to vote on it. Mr. Leishman agreed with both Ms. Peterson's comment and what is written. If the applicant sees that they are going to be denied, this is a way to delay the decision. He agreed with the statement that if they suddenly realize there is something of substance that could sway the decision in their favor, they should be allowed the opportunity to find it and come back. If the applicant is going to ask for it, then it should probably be explored if there is some substance there and there really are facts that are relevant and for the sake of fair play, they should be given the opportunity to gather those facts and bring them back. Mr. Leishman suggested that a continuance not be granted unless the applicant can explain to the members what additional information they are going to find and bring back and that it is not just a delay tactic. According to the bylaws, the petitioner can ask for a continuance but the request does not have to be granted. If there is something that would reverse the decision in favor of the applicant ~~than if~~ then it would be fair to allow them the opportunity to bring it in.

On page 5, under Member Responsibility, it states, 'Members shall make every effort to attend scheduled meetings of the Appeal Authority.' It then identifies full members and alternates. Mr. Berkley recommended removing the word 'full' as it does not mention 'full' members in any other place. The distinction between members and alternates is there and the word 'full' does not add anything except confusion.

On page 2, at the bottom of D, the punctuation was confusing and it was decided to change it to read: 'Other business may include but is not limited to training sessions, business sessions, planning sessions, and organizational sessions.' This change was to make it read more clearly and be more understandable.

> **Motion:** A motion was made by Marilyn Peterson approve and forward the bylaws with the recommended changes to the City Council for approval. The motion was seconded by Jess Palmer and passed unanimously.

Mr. Peart thought it needed to be stated that there were five members in attendance to approve the modification of the bylaws.

> **Motion:** A motion was made by Don Peart to adjourn. The motion was seconded by Jaye Poelman and passed unanimously.

The meeting adjourned at 6:45 p.m.

This certifies that the minutes of January 09, 2008 are a true and correct copy as approved by the Appeal Authority on February 13, 2008.

Signed: _____
Jeffery R. Leishman - Secretary